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State v. Vanslyke Appellant's Brief Dckt. 40172

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 40172
)	
v.)	CANYON COUNTY
)	NO. CR-2011-9502*C
TYLER KELLY VANSLYKE,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

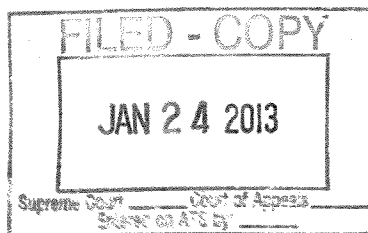
HONORABLE MOLLY J. HUSKEY
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

BEN PATRICK MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Tyler Kelly Vanslyke appeals from the Amended Restitution Order ordering him to pay \$7,834.77 in restitution. Mr. Vanslyke asserts that the district court abused its discretion when it ordered \$7,834.77 in restitution.

Statement of the Facts and Course of Proceedings

Jeffrey Cundiff and Justin Galloway reported the theft of a large number of goose decoys, two boats, ammunition and other sporting equipment from the property they leased for hunting purposes. (Presentence Investigation Report (*hereinafter*, PSI), p.1.) Donovan Lantz, the owner of the property, also had hunting equipment stolen from the property.¹ (Tr., p.8, Ls.15-25, p.9, L.20 – p.12, L.4.)

Canyon County Detective Bish received information that Mr. Vanslyke and Eric Kiser were responsible for the theft. (PSI, p.2.) Mr. Vanslyke subsequently admitted to detectives that he and Mr. Kiser went to the property intending to take the decoys. (PSI, p.2.) At Mr. Vanslyke's residence, detectives located much of the stolen equipment. (PSI, p.2.) The remaining stolen equipment, such as the boats, was located at the residence of Mr. Kiser's father. (PSI, p.2.)

Mr. Vanslyke was charged with one count of grand theft, in violation of I.C. §§ 18-2403(1) and 18-2407(1)(b). (R., pp.14-15.) Pursuant to a plea agreement, Mr. Vanslyke agreed to plead guilty to an amended charge of one count of burglary, in violation of I.C. § 18-1401. (R., pp.20-24.) The district court entered a withheld

¹ The hunting and sporting equipment stolen from the property will be referred to in this brief as "the stolen equipment."

judgment and placed Mr. Vanslyke on three years of probation. (R., pp.25-28, 38-40.) The district court also ordered Mr. Vanslyke to pay restitution in the amount of \$1,057.92 to Mr. Galloway. (R., pp.30-31.)

Meanwhile, State Farm Insurance (*hereinafter*, State Farm) had paid Mr. Lantz and Mr. Galloway insurance benefits on the stolen equipment before the stolen equipment was recovered. (Tr., p.17, Ls.5-7 (Mr. Lantz); Tr., p.93, Ls.8-19 (Mr. Galloway).) After the stolen equipment was recovered, State Farm gave Mr. Lantz and Mr. Galloway the opportunity to reclaim the stolen equipment. (Tr., p.116, Ls.12-18.) Mr. Lantz and Mr. Galloway chose not to reclaim the stolen equipment, because they would have had to reimburse State Farm for what they took back. (Tr., p.116, L.19 – p.117, L.1.) State Farm sold the recovered stolen equipment at a public auction, where Mr. Cundiff and Mr. Galloway purchased some of the recovered items. (Tr., p.69, Ls.1-18, p.96, Ls.8-9, p.104, Ls.1-15, p.117, Ls.2-3; R., pp.90-92.) Mr. Galloway bought the items he purchased at the auction for less money than he received for those items from State Farm. (Tr., p.104, Ls.11-15.)

The district court later ordered Mr. Vanslyke to pay restitution in the amount of \$7,276.85 to Mr. Lantz, Mr. Galloway, and State Farm. (R., pp.43-44.) The district court then filed an amended restitution order, supplanting the previously entered restitution orders and ordering Mr. Vanslyke to pay restitution in the amount of \$7,834.77 to Mr. Lantz, Mr. Galloway, and State Farm. (R., pp.69-70.)

Mr. Vanslyke filed an Objection to and Motion for Relief from Order of Restitution, challenging the amended restitution order. (R., pp.100-02.) The district court conducted a restitution hearing and heard testimony from Mr. Lantz, Mr. Cundiff, Mr. Galloway, Mr. Vanslyke, and Todd Collins, a fire claim representative at State Farm.

(Tr., p.5, p.109, Ls.19-24.) The district court ordered the parties to submit additional briefing. (R., p.105.)

After the parties submitted additional briefing (R., pp.106-20), the district court provided an oral ruling on the issue of restitution. (R., p.121.) The district court, in an Amended Restitution Order, ordered Mr. Vanslyke to pay restitution in the amount of \$7,834.77 to Mr. Galloway, Mr. Lantz, and State Farm. (R., pp.122-23.) The restitution was joint and several with any of Mr. Vanslyke's co-defendants. (R., p.123.)

Mr. Vanslyke filed a Notice of Appeal timely from the Amended Restitution Order. (R., pp.126-28.)

ISSUE

Did the district court abuse its discretion when it ordered \$7,834.77 in restitution?

ARGUMENT

The District Court Abused Its Discretion When It Ordered \$7,834.77 In Restitution

Mr. Vanslyke asserts that the district court abused its discretion when it ordered \$7,834.77 in restitution. The district court ordered restitution in the following amounts: (1) \$1,057.92 to Mr. Galloway; (2) \$500.00 to Mr. Lantz; (3) \$4,224.06 to State Farm, on Mr. Lantz's claim; and (4) \$2,052.79 to State Farm, on Mr. Galloway's claim. (R., p.123.) Mr. Vanslyke disputes the amounts of restitution ordered to State Farm on Mr. Lantz's claim and on Mr. Galloway's claim.

The district court in this case based the amount of restitution ordered to State Farm on the actual cash value of the stolen equipment. The actual cash value was calculated by State Farm. However, the law requires a district court to base the amount of restitution ordered on the market value of stolen property. Because the district court did not base the amount of restitution ordered to State Farm on the market value of the stolen equipment, it abused its discretion.

"The decision whether to order restitution, and in what amount, is within the discretion of a trial court, guided by consideration of the factors set forth in I.C. § 19-5304(7) and by the policy favoring full compensation to crime victims who suffer economic loss." *State v. Smith*, 144 Idaho 687, 692 (Ct. App. 2007). The amount of economic loss to be awarded is based on the preponderance of evidence submitted to the district court by the prosecutor, defendant, victim, or presentence investigator. I.C. § 19-5304(6). "The determination of the amount of restitution is a question of fact for the trial court whose findings will not be disturbed if supported by substantial evidence." *Smith*, 144 Idaho at 692. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v.*

Vargas, 152 Idaho 240, 243 (Ct. App. 2012). Appellate courts “will not overturn an order of restitution unless an abuse of discretion is shown.” *Smith*, 144 Idaho at 692. Review of a district court’s discretionary decision involves a multi-tiered inquiry to determine (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *Id.*

In determining the amount of restitution to be ordered, a district court “shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate.” I.C. § 19-5304(7). Restitution may only be ordered “for any economic loss which the victim actually suffers.” I.C. § 19-5304(2). Economic loss “includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed” I.C. § 19-5304(1)(a). For purposes of restitution, the definition of “value” is the same as the definition in the theft statutes. I.C. § 19-5304(1)(c); *State v. Johnson*, 149 Idaho 259, 267 (Ct. App. 2010). Thus, “value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.” I.C. § 18-2402(11)(a); *Smith*, 144 Idaho at 692. The Idaho Court of Appeals has held that, “generally, the ‘market value’ of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the ‘cost of replacement’ which would be the cost for the owner to reacquire the same goods.” *Smith*, 144 Idaho at 693.

Here, the district court, when determining the restitution owed by Mr. Vanslyke, was permitted to consider the value of any property stolen by Mr. Vanslyke, and was to calculate the value of that property according to its “market value,” so long as that value could be satisfactorily ascertained. See *id.* Thus, the question is whether there was either (1) substantial evidence that the amount of restitution ordered to State Farm was the market value of the stolen equipment, or, failing that, (2) substantial evidence that the market value of the stolen equipment could not be satisfactorily ascertained.

A. Substantial Evidence Did Not Establish That The Amount Awarded To State Farm Is The Market Value Of The Stolen Equipment

Mr. Vanslyke asserts that there is no substantial evidence from which the district court could find that the amount of restitution ordered to State Farm is the market value of the stolen equipment. Thus, the district court abused its discretion by not acting consistently with the applicable legal standards.

State Farm paid Mr. Lantz \$5,145.66 in benefits on his claim. (R., 51.) State Farm received \$921.60 from the auction of the recovered stolen equipment and credited that figure to Mr. Lantz’s claim, (R., pp.52-54), and so reduced its requested amount of restitution on Mr. Lantz’s claim to \$4,224.06, (Tr. p.139, Ls.13-25). Additionally, State Farm paid Mr. Galloway \$2,052.79 in benefits on his claim. (R., pp.62, 66.) State Farm’s requested amount of restitution on Mr. Galloway’s claim was \$2,052.79. (R., p.62.) The district court ordered Mr. Vanslyke to pay the exact amounts of restitution State Farm requested. (R., p.123.)

State Farm’s payments, and thus the restitution ordered to State Farm, were based on State Farm’s calculation of the “actual cash value” of the stolen equipment claimed by Mr. Lantz and Mr. Galloway. (See Tr., p.115, Ls.17-23.) The actual cash

value of property is calculated by taking the replacement value of the property and subtracting depreciation for the age or condition of the property. (See Tr., p.125, Ls.8-17; p.137, Ls.9-11.) The replacement value of property is submitted to State Farm by the insured. (Tr., p.135, Ls.21-23.) State Farm then evaluates the submitted replacement value for accuracy. (Tr., p.136, Ls.3-8.) Afterwards, State Farm takes depreciation for the property. (See Tr., p.136, Ls. 13-17.)

Here, State Farm submitted documentation showing the actual cash value it calculated for the stolen equipment. (R., pp.55-57 (contents inventory summary for Mr. Lantz's claim); pp.63-65 (contents inventory summary for Mr. Galloway's claim).) However, the actual cash value of property does not necessarily equal the market value.² In this case, substantial evidence did not establish that the actual cash value is the market value of the stolen equipment.

In cases where the Idaho Court of Appeals has concluded that there was sufficient evidence for the market value of stolen property, it has relied upon testimony or other evidence showing the price at which the stolen property would be held out for

² In a case involving a restitution order for a stolen used scaffold, the Court of Appeals of Kansas decided that "straight-line depreciation," similar to the approach used by State Farm to derive actual cash value, does not itself establish the "fair market value" of the used scaffold:

[The defendant] argues that the court should apply a straight-line depreciation schedule to the scaffold. He reasons that if it had a useful life of 20 years and was 16 years old at the time of the theft, its value was only 20% of its original cost. Anyone who has sold a new car a few months after its original purchase will confirm that straight-line depreciation is not always an accurate measure of fair market value. The buyer who paid \$2,032,000 for the 1699 "The Lady Tennant" Stradivarius violin in 2005 certainly did not think so. Depreciation is a factor to be considered, but it does not trump the ultimate test: the fair market value of the item in an arm's-length sale.

sale to the general public. For example, in a theft case involving whether used pipe stolen from a farm exceeded \$1,000 in market value, such that the defendant could be convicted of grand theft, the district court heard testimony from “the owner of a company engaged in the business of selling new and used pipe.” *Vargas*, 152 Idaho at 243-44. The company owner in *Vargas*, who owned the company that reinstalled the stolen used pipe, “clearly testified that when used pipe is available he can generally sell it for 60 percent of the price of equivalent new pipe. He testified about the price he would pay for the used pipe at issue (slightly over \$200 per ten-foot section) and what he would charge for the pipe on re-sale (slightly over \$300 per ten-foot section).” *Id.* Because there were nineteen sections of stolen pipe, the court concluded that “under either measure there was sufficient evidence that the market value of the pipe exceeded \$1,000.” *Id.* at 244.

Similarly, in *Smith, supra*, the Idaho Court of Appeals decided that “the district court did not err in calculating the amount of restitution owed for the property stolen by [the defendant] by using the *ascertained retail value* of that property.” *Smith*, 144 Idaho at 693 (emphasis added). The court’s use of the phrase “ascertained retail value” implies that the parties in *Smith* presented evidence by which the district court could know or ascertain the retail value of the stolen property, and thereby derive the market value.

In this case, there was no evidence presented to show that the actual cash value of the stolen equipment is “the reasonable price at which the owner would hold those goods out for sale to the general public” – the market value of the stolen equipment. See *Smith*, 144 Idaho at 693. For example, Mr. Lantz did not testify as to the market value of the stolen equipment on his claim. While Mr. Lantz testified that his used

trolling motor would be worth \$325 at a shop, (Tr., p.37, L.23 – p.38, L.3), he based that testimony (and the \$306.34 replacement value he submitted to State Farm) on “Cabela’s catalog price.” (Tr., p.36, Ls.15-23; R., p.93.) Testimony by Mr. Collins indicated that the replacement value for property is for a “brand new” replacement. (See Tr., p.122, Ls.3-15.) Because the motor was used, (Tr., p.36, L.24 – p.37, L.2), it cannot be said that Mr. Lantz’s testimony about the price for a new motor at a shop or in Cabela’s catalog (the replacement value) established the price that this particular used motor would have been held out for sale to the general public (the market value). Mr. Lantz later agreed that, as a general rule, brand new decoys cost more than used decoys. (Tr., p.40, Ls.15-19.) Under that reasoning, it would follow that a new motor would cost more than a used motor. Thus, the testimony on the replacement value of the motor, even bearing in mind State Farm accepted \$306.34 as the actual cash value of the motor, did not establish the market value of the used motor.

The rest of Mr. Lantz’s testimony did not deal with the price at which the rest of the stolen equipment would have been held out for sale to the general public. Mr. Lantz testified that all of his stolen equipment was used. (Tr., p.37, Ls.3-6.) To prove the value of the stolen equipment, Mr. Lantz would have had to give testimony on the market value of the stolen equipment as used, because “value means the market value of the property *at the time and place of the crime.*” I.C. § 18-2402(11)(a) (emphasis added). However, Mr. Lantz never testified as to how much he would have held the stolen equipment out for sale, as used, at the time of the theft. *Cf. Vargas*, 152 Idaho at 243-44 (stating that the company owner testified on how much he would have held the stolen used pipe sections out for sale). Thus, Mr. Lantz did not testify as to the market

value of the stolen equipment. See *Smith*, 144 Idaho at 693. Nor did Mr. Cundiff testify as to the market value of the stolen equipment on Mr. Lantz's claim.

Similarly, the testimony from Mr. Galloway does not establish that the actual cash value reflected the price at which the stolen equipment on his claim would be held out for sale to the general public. Mr. Galloway determined the replacement value of the stolen property on his claim by going through a Cabela's catalog and "deduct[ing] what it was going to cost to replace the item." (Tr., p.88, L.14 – p.89, L.1.) Mr. Galloway also testified that all of his stolen equipment was used. (Tr., p.100, Ls.14-16.) Just like Mr. Lantz, Mr. Galloway never testified as to how much he would have held the stolen equipment, as used, out for sale. Cf. *Vargas*, 152 Idaho at 243-44. Thus, Mr. Galloway did not testify as to the market value of the stolen equipment. See *Smith*, 144 Idaho at 693.

The testimony from Mr. Collins, the State Farm employee, does not show that the actual cash value of the stolen equipment was the market value. In fact, when asked what the actual cash value approximates, Mr. Collins responded: "The useful life left in a product." (Tr., p.125, Ls.18-21.) Mr. Collins's testimony did not establish that the "useful life left in a product" is equivalent to "the reasonable price at which the owner would hold those goods out for sale to the general public." See *Smith*, 144 Idaho at 693. Thus, there was no substantial evidence that the actual cash value of the stolen equipment is the market value of the stolen equipment.

Additionally, while the district court concluded that the market value of the stolen equipment was the actual cash value, it mischaracterized the process by which State Farm calculated the actual cash value. At the oral ruling hearing, the district court stated that "[t]he insurance adjuster testified as to the method by which he received the

value, which was essentially taking market value and deducting depreciation.” (Tr., p.174, L.23 – p.175, L.24.) Later, the district court stated, “the insurance company paid for the items, and the amount that they are out is the market value that they are out. So the market value was determined essentially by the insurance company, which was the amount that it was held out to the general public, less the depreciation.” (Tr., p.175, Ls.20-25.)

However, State Farm determined the actual cash value for its payments not by taking the market value of the stolen equipment, less depreciation, but by taking the *replacement value* of the stolen equipment, less depreciation. (See Tr., p.125, Ls.8-17, p.137, Ls.9-11.) As seen above, Mr. Lantz and Mr. Galloway determined the replacement value of the stolen equipment based on the price to replace the property with brand new items. (Tr., p.36, Ls.15-23, p.88, L.14 – p.89, L.1.) Thus, the replacement value should not be conflated with the market value of the used items that made up the stolen equipment. Further, State Farm never represented that it used the market value of the stolen equipment as the starting point for determining the actual cash value.

In sum, the evidence presented to the district court did not show that the actual cash value was the reasonable price at which the stolen equipment would have been held out for sale to the general public. There was no substantial evidence from which the district court could find that the actual cash value calculated by State Farm is the market value of the stolen equipment. Thus, the district court abused its discretion by not acting consistently with the applicable legal standards.

B. Substantial Evidence Established The Satisfactorily Ascertained Market Value Of The Stolen Equipment, And So The Restitution Ordered To State Farm May Not Be Justified As The Replacement Value Of The Stolen Equipment

If the market value of stolen property cannot be satisfactorily ascertained, the replacement value may be used to determine the amount of restitution to be ordered. I.C. § 18-2402(11)(a); *Smith*, 144 Idaho at 692. In this case, the actual cash value used in the district court's order of restitution to State Farm on Mr. Lantz's claim was largely identical to the replacement value, because State Farm did not take any depreciation on the replacement value figures provided by Mr. Lantz.³ (R., pp.93-94.) The actual cash value used in the district court's order of restitution to State Farm on Mr. Galloway's claim was approximately five percent lower than the replacement value, because State Farm took about five percent depreciation on most of the replacement value figures provided by Mr. Galloway. (R., pp.63-64.) Thus, it could be argued that, if there were no satisfactorily ascertained market value for the stolen equipment, the restitution ordered to State Farm would be justified as an approximation of the replacement value. However, the district court here was not entitled to use replacement value or the roughly-equivalent actual cash value to order restitution to State Farm, because there is substantial evidence of the satisfactorily ascertained market value for the stolen equipment.

The market value of the stolen equipment in this case is satisfactorily ascertained from the results of the auction of the stolen equipment. The stolen equipment sold at

³ Due to the special limit for watercraft on Mr. Lantz's policy, State Farm paid Mr. Lantz \$1,000.00 for the 12 foot smoker craft, even though Mr. Lantz provided a replacement value of \$3,710.00. (R. pp.93-95.) Mr. Collins testified that the \$3,710.00 figure was not accurate and estimated the replacement value of the boat was \$1,700.00. (Tr., p.130, Ls.3-16.) However, that downward revision did not impact the benefits paid to Mr. Lantz on the boat. (Tr., p.134, L.25 – p.135, L.7.)

auction for a total of \$1,152.00. (R, pp.91-92.) Minus the commission fee of \$230.40, State Farm received a total of \$921.60 from the auction. (R., p.91-92.) The total of \$1,152.00 from the auction is the market value of the stolen equipment because it is the “reasonable price at which the owner would hold those goods out for sale to the general public.” *Smith*, 144 Idaho at 693.

Testimony presented the district court established that the auction price is the market value of the stolen equipment. At the restitution hearing, Mr. Collins agreed that it would be “a fair statement to say that a very good kind of gut check or way to verify whether or not these replacement values and the actual cash value are accurate would be to test that in a market type of scenario” (Tr., p.138, Ls.11-15, 21.) “[M]arket type of scenario” meant “where people are given the opportunity to come in and bid at an arm’s length buyer/seller relationship to get the price that a willing buyer and a willing seller is willing to come to an agreement at” – put otherwise, an auction. (Tr., p.138, Ls.16-23.) Under that scenario, and assuming that the auction was public and involved a number of buyers, Mr. Collins also agreed with the statement “what was actually paid per your main auction was a much closer reflection of the fair market value of those items than anything that was created with the subjective input of your customers.” (Tr., p.138, L.25 – p.139, L.11.) Indeed, Mr. Galloway testified that there were lots of bidders at the auction of the stolen property. (Tr., p.102, L.23 – p.103, L.1.) Mr. Cundiff testified that he and “six or seven bidders” had bid on a boat at the auction. (Tr., p.72, L.22 – p.73, L.1.)

The testimony concerning the auction indicated that the stolen equipment was held out for sale at a reasonable price to the general public. See *Smith*, 144 Idaho at 692. Thus, the auction price for the stolen equipment is the market value. As seen

above, the total auction price was \$1152.00. (R., p.91.) Bearing in mind that restitution may only be ordered “for any economic loss which the victim actually suffers,” I.C. § 19-5304(2), State Farm should not receive the total auction price. Because State Farm already reduced its financial obligation to Mr. Lantz by the \$921.60 it received from the auction, (Tr. p.139, Ls.13-25), it should not be permitted to receive that same amount as restitution now. Therefore, the restitution order to State Farm should be reduced to the auction commission fee of \$230.40. (See R., p.91.)

However, evidence presented at the restitution hearing may indicate that, solely with regard to the stolen used goose decoys, the auction price is not “the market value of the property at the time and place of the crime.” I.C. § 18-2402(11)(a). Mr. Cundiff testified that the condition of the stolen used goose decoys had changed in the time between the theft and the auction. (Tr., p.62, Ls.13-25.) He testified that the stolen used goose decoys had been sanded, painted, or marked with an emblem and Mr. Vanslyke’s phone number. (Tr., p.62, Ls.13-25, p.64, L.23 – p.65, L.8, p.70, Ls.1-15.) Mr. Vanslyke also testified that he had sanded, painted, or marked some of the stolen used goose decoys. (Tr., p.165, L.15 – p.166, L.7.) Mr. Vanslyke testified that these changes “actually probably made them sell for more, if anything.” (Tr., p.165, Ls.23-24.)

The evidence that the condition of the stolen used goose decoys had changed in the time between the theft and the auction may indicate that the auction price of the stolen used goose decoys is not the market value at the time and place of the crime. This does not apply with regard to the rest of the stolen equipment, because there was no evidence presented that the condition of the rest of the stolen equipment had changed in the time between the theft and the auction.

Even if the market value of the stolen used goose decoys is not the auction price, the market value of the stolen used goose decoys is satisfactorily ascertained from Mr. Vanslyke's testimony presented at the restitution hearing. At the restitution hearing, Mr. Vanslyke testified he had experience with buying and selling used decoys, "having worked at a decoy manufacturer for several years and being an airbrush artist and hunting for 15 years" (Tr., p.148, Ls.1-5.) He also testified that there was a market for used decoys in the Treasure Valley. (Tr., p.147, Ls.19-21.) Based on his experience, Mr. Vanslyke estimated that a used decoy, within a year of purchase, lost "at least 50 percent" of its value compared to brand new. (Tr., p.147, L.22 – p.148, L.6.) He testified that a dozen new goose decoys would cost about \$330.00, while a dozen used goose decoys, after he fixed them up, would cost about \$150.00 on Craigslist. (Tr., p.151, Ls.5-12.) Further, Mr. Vanslyke stated that the stolen used decoys in this case "hadn't been refurbished." (Tr., p.151, Ls.20-21.) His testimony on the market value of used goose decoys was uncontroverted.

Mr. Vanslyke's testimony on the market value of the stolen used goose decoys was similar to the testimony in *Vargas* on the market value of the stolen used pipe, which the Idaho Court of Appeals accepted as sufficient evidence of market value. Both the company owner in *Vargas*, 152 Idaho at 243-44, and Mr. Vanslyke, (Tr., p.147, Ls.19-21), testified that there were markets for the used items in their respective cases. Just as the company owner in *Vargas* testified that he could generally sell used pipe for 60 percent of the price of equivalent new pipe, 152 Idaho at 244, Mr. Vanslyke testified that he could sell used goose decoys on Craigslist for 50 or 60 percent of the value of new decoys, (Tr., p.151, Ls.5-13.) Following *Vargas*, Mr. Vanslyke's testimony was sufficient evidence of the reasonable price at which the stolen used goose decoys

would have been held out for sale to the general public. Thus, the market value of the used goose decoys is satisfactorily ascertained from his testimony.

The actual cash value for the stolen used goose decoys accounts for \$3,318.86⁴ of State Farm's restitution request on Mr. Lantz's claim. (R., p.93.) Because Mr. Vanslyke's uncontroverted testimony was sufficient evidence of the market value of the stolen used goose decoys, the market value of the decoys is somewhere between \$1,659.33 (50 percent of \$3,318.66) or \$1,991.20 (60 percent of \$3,318.66). Again, restitution may only be ordered "for any economic loss which the victim actually suffers." I.C. § 19-5304(2). Because State Farm received \$574.50 from the auction of the stolen used goose decoys,⁵ its restitution in this scenario should be reduced to an amount between \$1,084.83 (\$1,659.33 minus \$574.50) and \$1,416.70 (\$1,991.20 minus \$574.50) for the stolen used goose decoys, well as the auction commission fee of \$230.40 (to account for the rest of the stolen equipment). Thus, the total amount of restitution ordered to State Farm in this scenario should be between \$1,315.23 (\$1,084.83 plus \$230.40) and \$1,647.10 (\$1,416.70 plus \$230.40).

⁴ The total of \$3,318.86 for the actual cash value of the stolen used goose decoys breaks down as follows: \$1,987.50 for five dozen full body goose decoys, \$571.34 for three dozen half shell motion goose decoys, \$526.82 for three dozen sleeper half shell goose decoys, and \$233.20 for two dozen floater goose decoys. (R., p.93; see Deputy B. Minshall, Canyon County Sheriff's Office, Law Supplemental Narrative, p.2 (Mar. 9, 2011) (attached to the PSI).)

⁵ The total of \$574.50 for the auction of the stolen used goose decoys breaks down as follows: \$40.00 for Lot No. 1102 (12 stack goose decoy); \$45.00 for Lot No. 1103 (11 stack goose decoy); \$55.00 for Lot No. 1104 (12 stack goose decoy); \$50.00 for Lot No. 1105 (12 stack goose decoy); \$1.00 for Lot No. 1106 (box extra goose heads); \$294.00 for Lot No. 1107 (21x full body goose decoys choice); \$27.00 for Lot No. 1108 (3x goose decoys choice); \$20.00 for Lot No. 1109 (goose decoys (non felt)/4); \$25.00 for Lot No. 1110 (rubber goose decoys/6); and \$17.50 for Lot No. 1114 (goose decoy pile/accessories). (R., p.90.)

In sum, the district court was not permitted to use the actual cash value as an approximation of the replacement value of the stolen equipment when it ordered restitution to State Farm, because the market value of the stolen equipment is satisfactorily ascertained from the substantial evidence presented to the district court.

CONCLUSION

Substantial evidence did not support the conclusion that the amount of restitution ordered to State Farm, on the basis of actual cash value, was the market value of the stolen equipment. Further, there was substantial evidence of the satisfactorily ascertained market value for the stolen equipment. Because substantial evidence did not support the amount of restitution ordered to State Farm, Mr. Vanslyke submits that the district court abused its discretion when it ordered \$7,834.77 in restitution.

For the above reasons, Mr. Vanslyke respectfully requests that this Court vacate the restitution order and remand the matter to the district court with instructions to apply the proper legal standard and order restitution to State Farm, based on the evidence already presented, in an amount determined using Mr. Vanslyke's testimony as the market value of the stolen used goose decoys, and the auction price as the market value of the rest of the stolen equipment.

DATED this 24th day of January, 2013.


BEN PATRICK MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of January, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TYLER KELLY VANSLYKE
2421 IOWA
CALDWELL ID 83605

MOLLY J HUSKEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

MARK MIMURA
ATTORNEY AT LAW
2176 E FRANKLIN RD STE 12
MERIDIAN ID 83642

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

A handwritten signature in black ink, appearing to read "Evan A. Smith", is written over a horizontal line.

EVAN A. SMITH
Administrative Assistant

BPM/eas